

REMARKS

Favorable reconsideration of this application in view of the above amendments and following remarks is respectfully requested.

Claims 16-31 are pending in this application. By this amendment, Claim 16 is amended; Claim 31 is added; and no claims are canceled herewith. It is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claims 16-21 and 27-30 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 4,785,614 to Schoenherr; and Claims 22-26 were rejected under 35 U.S.C. § 103(a) as unpatentable over Schoenherr in view of U.S. Patent No. 4,693,065 to Aron. These rejections are respectfully traversed.

The applied art does not teach or suggest a first and second gathering device situated substantially beside each other and each gathering device respectfully associated with a first and second swathing device located behind the gathering devices and a separation means situated in front of inner ends of the first and second gathering devices, as recited in Claim 16. Nor does the applied art teach or suggest a means for clearing the strip of land situated between the inner ends of the first and second gathering devices, as recited in Claim 31.

Instead, Schoenherr is directed to having a machine that includes a combination between a windrower and a tedder. The windrower includes three raking disks 130, 132 and 134 while the tedder consists of a drum with bars 38 equipped with teeth 40.

The machine according to exemplary embodiments of the invention is a machine to windrow the produce. The machine includes two pick-ups 19 and 20 to pick up the produce on the ground and two windrowing devices 27 and 28 that are associated with the pick-ups and form a windrow. Between the two pick-ups 19 and 20, a means 35 is provided to separate the produce and thus to benefit the picking up and the guiding of this produce onto the windrowing devices 27 and 28. Accordingly, the makeup of the machine and the work

done by the machines according to exemplary embodiments of the invention is distinguishable from the machine described in Schoenherr.

Further, Schoenherr does not teach or suggest the position of the separation means between the two pick-ups. As recited in Claim 16, a main frame has a first and second gathering device, each having an inner end located toward a middle portion of the machine, the first and second gathering devices situated substantially one beside another with respect to a direction of travel of the machine and a separation means is situated in front of the inner ends of the first and second gathering devices. There is no teaching or suggestion for the features recited in Claim 16 discussed above.

Additionally, Applicants respectfully assert that there is no motivation to combine the teachings of Schoenherr and Aron. In fact, Applicants respectfully assert that only the present application suggests the claimed combination of features. When an obviousness determination is based on multiple prior art references, there must be a showing by the patent examiner of some “teaching, suggestion, or reason” to combine the references. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997) (also noting that the “absence of such a suggestion to combine is dispositive in an obviousness determination”). Whether motivation to combine the references is shown is a question of fact. See In re Dembiczak, 175 F.3d 994, 1000, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Evidence of a suggestion, teaching, or motivation to combine prior art references may flow, *inter alia*, from the references themselves, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need not expressly teach that the disclosure contained therein should be combined with another, see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d 1481, 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must nevertheless be “clear and particular.” Dembiczak,

175 F.3d at 999, 50 USPQ2d at 1617. “Trade-offs often concern what is feasible, not what is, on balance, desirable. Motivation to combine requires the latter.” Winner International Royalty Corp. v. Wang, 53 USPQ2d 1580, 1587 (Fed. Cir. 2000). Interpreting the Supreme Court’s decision in Dickinson v. Zurko, 50 USPQ2d 1930 (1999) regarding the standard of review in patent matters, the CAFC determined that when upholding a rejection of a claimed invention in an appeal, the CAFC must find that the decision by the USPTO Board of Appeals and Interferences is supported by “substantial evidence,” In re Gartside, 53 USPQ2d 1769 (Fed. Cir. 2000). Accordingly, for a proper rejection based on a combination of references, the rejection must be supported by evidence that the motivation to combine references was not merely feasible, but desirable.

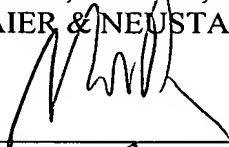
Thus, it is respectfully submitted that there is no basis in the teachings of either Schoenherr or Aron to support the applied combination. Certainly, the outstanding Office Action fails to cite to any specific teachings within either reference to support the applied combination. Accordingly, it is respectfully submitted that the combination of Schoenherr with Aron is a result of hindsight reconstruction in view of the teachings of the present specification, and is improper.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

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